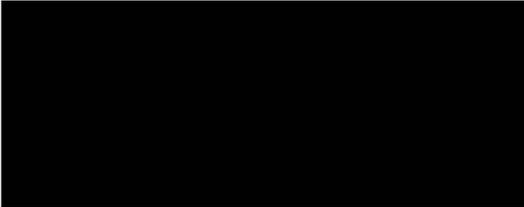


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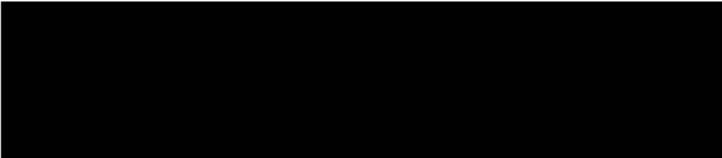
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IN RE: Petitioner:
Beneficiary:



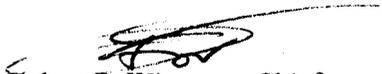
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner is engaged in the operation of Brazilian churrasco-style restaurants. It seeks to temporarily employ the beneficiary as a Churrasqueiro, or gaucho chef, and filed a petition to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge. The director determined that the petitioner had established neither that the beneficiary possesses specialized knowledge nor that the intended employment required specialized knowledge.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion, and forwarded the appeal to the AAO for review. On appeal, counsel submits a brief and asserts that the petitioner has met its burden of proof by establishing that the proposed position requires specialized knowledge. Counsel further asserts that the director misconstrued relevant evidence of the beneficiary's specialized knowledge of the petitioner's processes and procedures.

To establish L-1 eligibility, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). Specifically, within three years preceding the beneficiary's application for admission into the United States, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year. In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

This matter presents two related, but distinct, issues: (1) whether the beneficiary possesses specialized knowledge; and, (2) whether the proposed employment is in a capacity that requires specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines “specialized knowledge” as:

[S]pecial knowledge possessed by an individual of the petitioning organization’s product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization’s processes and procedures.

As stated above, the petitioner seeks to employ the beneficiary temporarily in the United States as a gaucho chef, which is generally translated into English as a barbeque chef. The petitioner’s restaurant endeavors to provide its customers with an authentic taste of Southern Brazil and its cultures, requiring its gaucho chefs to not only cook meats to order but also be well versed in cultural facts and storytelling.

In support of the petitioner’s contention that the proposed position in the United States involves specialized knowledge, counsel submitted a number of documents with the initial petition in support of the beneficiary’s qualifications, including a letter from the petitioner dated November 3, 2004. The letter explained that gaucho-chefs go through a rigorous two-year training process regarding the preparation of meat and the serving of churrasco style cooking. The petitioner claimed that as a result, the knowledge and training of a gaucho chef is completely different than that of similarly qualified employees of a typical American steakhouse, and specifically noted that the beneficiary had learned the petitioner’s confidential recipes as a result thereof. With regard to the beneficiary’s proposed position in the United States, the petitioner stated:

As Gaucho-Chef, [the beneficiary] will be central to the functionality of [the petitioner]. He will prepare and cook the meat, operate the churrasqueira (grill), in addition to appearing to the customer and serving the meat. Specifically, [the beneficiary] will:

- Follow [the petitioner’s] secret recipes based on the type of food to be prepared and apply personal knowledge and experience in food preparation
- Supervise personnel engaged in assisting in the preparation and cooking of meats
- Cook or otherwise prepare food according to recipe
- Cut, trim and bone meats and poultry for cooking
- Portion cooked foods
- Carve meats
- Appear to the Customer in traditional Gaucho costume and serve meat according to established company methods
- Estimate food consumption
- Requisition or purchase foodstuffs

- Receive and examine foodstuffs and supplies to ensure quality and quantity meet established standards and specifications

The petitioner concluded by stating that the beneficiary received extensive knowledge and training of the company's processes and procedures as a result of his five and one-half years working as a gaucho-chef for the foreign entity in Brazil.

With regard to its training program for gaucho chefs, the petitioner indicated that four months, or 480 hours, of training was mandatory. The petitioner contended that during this time, the beneficiary was trained in three principle areas, namely, the preparation of meats and marinades, the operation of the churrasqueira (grill), and production and proper handling. After this initial training, the beneficiary entered a six-month period of practical training, which was followed by a one-year apprentice period. The petitioner concluded that overall, the training totaled close to two years from start to finish.

In a letter dated November 10, 2004, the director requested additional evidence. Specifically, the director cited a September 9, 2004 memorandum by Fujie Ohata, Director of Service Center Operations, which clarified that chefs or specialty cooks were generally not considered to have specialized knowledge for L-1B purposes, although they may in fact have knowledge of a restaurant's special recipes or food preparation techniques. The director requested evidence to refute the premise that another chef in the industry could not master the petitioner's techniques within a reasonable period of time.

In a response dated January 31, 2005, the petitioner provided an abundance of documentary evidence in support of the contention that the beneficiary, as a gaucho chef, was distinguishable from general chefs who were the subject of the cited service memorandum. The petitioner contended that the beneficiary underwent a "lengthy and structured training program," and contended that the petitioner's "particular style of cooking is ancient and has subtle nuances to it that must be learned."

In addition, the petitioner submits an expert opinion by [REDACTED] Chef Instructor at the Illinois Institute of Art-Chicago, dated January 11, 2005. Upon review of the gaucho training manual, he stated:

It is of my professional opinion that the highly specialized duties of Gaucho-Chefs are not something that could be easily duplicated in the United States using local personnel. . . . Just trying to train a local chef engaged in meat preparation on the handling and cooking of the meat, as well as monitoring the open-flame charcoal pits, would be an immensely overwhelming task to take on, requiring many months of specialized training.

An additional opinion by [REDACTED] the Coordinating Chef Instructor and Associate Professor of Hospitality Programs at [REDACTED] College in Illinois, was provided in support of the petitioner's contentions. In an undated letter, Mr. [REDACTED] stated:

[The petitioner's] Gaucho-Chefs are extensively trained in the restaurant's operations. The business will not succeed without a sufficient supply of trained Gaucho-Chefs. Why are these positions critical? Fundamental to the restaurant industry is the fact that the value added by personnel is the critical indicator of restaurant success. Untrained or improperly trained personnel will lead to wastage, lost inventory, and loss of guests. The Gaucho-Chefs are

trained in food production and cooking similar to American Steak houses, but much more than food production. Butchery is also extensively taught and applied. Cooking using extremely large coal fired grills is taught. Table service of a unique nature is taught and applied. The resulting skill set is unique to [the petitioner's] steak houses. The nearly 2-year training program for Gaucho-Chefs at [the petitioner's] Steakhouses is highly customized.

The director determined that the record did not establish employment of the beneficiary in a position that requires specialized knowledge, nor did it establish that the beneficiary possesses specialized knowledge. Specifically, the director noted that the petitioner failed to address the question posed in the request for evidence, which specifically asked why another chef in the industry with similar meat preparation and butchery skills would not be able to learn the essentials of gaucho training in a similar period. The director further noted that the petitioner's expert opinions did not clarify why it would take a long period of time for another chef to become similarly trained in this industry. Furthermore, the director noted that upon review of the expert reports, the petitioner's goal of providing an authentic experience to customers in the field of Southern Brazilian cuisine and heritage did not render its chefs, who are required to cook in the churrasca style, employees with specialized knowledge of the petitioner's processes.

Counsel submits a lengthy brief on appeal in support of the petitioner's assertions that the beneficiary possesses specialized knowledge, and that the intended employment requires specialized knowledge. Counsel addresses each of the director's points individually, and seeks to overcome the basis of the director's denial by arguing that the director's reliance on the Ohata memorandum and the examples contained therein resulted in a misconstruing of the evidence and statements mentioned by all experts in determining the beneficiary's qualifications. Counsel argues that the director should have focused on the evidence which contends that the gaucho chefs are the key employees of the petitioner, and their existence and continued presence is critical to the petitioner's success.

Counsel further refers to the 1994 Associate Commissioner's memorandum and the 2002 and 2005 memoranda of the Director of Service Center Operations, and asserts that the beneficiary possesses knowledge of a product or process which cannot be easily transferred or taught to another individual, which is a characteristic of specialized knowledge according to the memorandum. *See* Memo. from James A. Puleo, Acting Exec. Assoc. Commr., Office of Operations, Immigration and Naturalization Serv., to All Dist. Dir. et al., *Interpretation of Special Knowledge*, 1-2 (March 9, 1994) (copy on file with *Am. Immig. Law Assn.*); Memo. from Fujie Ohata, Director of Service Center Operations, *Interpretation of Specialized Knowledge* (Dec. 20, 2002), *Interpretation of Specialized Knowledge for Chefs and Specialty Cooks Seeking L-1B Status* (Sept. 9, 2004).

On review, the record does not contain sufficient evidence to establish that the beneficiary possesses specialized knowledge or that the intended position in the United States requires specialized knowledge.

When examining the specialized knowledge capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). As required in the regulations, the petitioner must submit a detailed description of the services to be performed sufficient to establish specialized knowledge. *Id.*

In the present matter, the petitioner has provided ample description of the beneficiary's intended employment in U.S. entity, and his responsibilities as a gaucho chef. Specifically, the petitioner, through statements from experts in the hospitality industry, has stated that the main functions of the beneficiary's proposed position are

three-fold: (1) culinary duties, including butchering, preparing, and cooking meats; (2) service functions, including serving tables and engaging customers; and (3) dramaturgy, involving the serving of food to customers in a dramatic and theatrical manner, resulting in a memorable experience for the customer. The petitioner, however, has not sufficiently documented how the beneficiary's performance of the proposed job duties distinguishes his knowledge as specialized. The petitioner repeatedly states throughout the record that the beneficiary has noteworthy and in-depth knowledge of the foreign entity's and the petitioner's operational process, and in particular its confidential and secret recipes, and that his role in the petitioner's restaurant is consequently a key role that no similarly qualified chef in the United States could perform. The petitioner further asserts that the beneficiary possesses specialized knowledge as a result of his five and one-half years of work experience in the foreign company and his successful completion of the required two years of training to become a gaucho chef. While training has been discussed in detail in the record, it is noted that no documentation confirming the beneficiary's completion of such training is contained in the record.

Nevertheless, a review of the petitioner's statements and the statements of the experts raises the question of whether the beneficiary's qualifications are so unique and specialized that similar knowledge could not be imparted to an American worker without undue economic hardship to the petitioner. As discussed by the director in the denial, there is no documentary evidence that definitively indicates that an American worker, meeting all of the petitioner's requirements as an ideal candidate for gaucho chef, would be refused employment with the petitioner's U.S. entity. In fact, the petitioner appears to have disregarded the director's request for clarification on this issue entirely.

With this established, the AAO can next look to the training requirements of the beneficiary's proposed position. It appears from the evidence submitted that the two-year training period for a gaucho chef with the petitioner starts with the implementation of basic skills, and once initial training is completed, the hands-on training is the result of a one year apprenticeship. The AAO finds this policy confusing, particularly in light of the claims of counsel and the petitioner that no other chefs similarly trained in the industry could perform the duties of the beneficiary or of gaucho chefs in general. Counsel further claims that to forego the transfer of employees from the foreign parent and instead train American chefs or similarly skilled workers to fill the gaucho chef positions at the petitioner's restaurants would result in undue economic hardship to the petitioner, thus obviating the guidance set forth in the 2004 Ohata memorandum. The AAO disagrees. The petitioner indicates that even if a new employee has worked in the industry previously, he must still undergo the petitioner's exclusive training. What then, if anything, prohibits an American employee from undergoing the same procedures? The petitioner has failed to discuss why the cost of on-the-job training for an American worker in one of its U.S. restaurants would result in financial hardship, since it is evident from the evidence provided that the petitioner employs many gaucho chefs throughout its various U.S. locations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner has failed to adequately show that it would be financially burdened by training American employees in any of its U.S. locations in lieu of transferring employees from its parent in Brazil, particularly since much of the training is on the job. Alternatively, the petitioner has also failed to establish that it would be more of a financial hardship to train and transfer workers from its parent in Brazil than to send U.S. workers to Brazil for training.

It is also appropriate for the AAO to look beyond the stated job duties and consider the importance of the beneficiary's knowledge of the business's product or service, management operations, or decision-making

process. *Matter of Colley*, 18 I&N Dec. 117, 120 (Comm. 1981) (citing *Matter of Raulin*, 13 I&N Dec. 618 (R.C. 1970) and *Matter of LeBlanc*, 13 I&N Dec. 816 (R.C. 1971)).¹ As stated by the Commissioner in *Matter of Penner*, 18 I&N Dec. 49, 52 (Comm. 1982), when considering whether the beneficiaries possessed specialized knowledge, "the *LeBlanc* and *Raulin* decisions did not find that the occupations inherently qualified the beneficiaries for the classifications sought." Rather, the beneficiaries were considered to have unusual duties, skills, or knowledge beyond that of a skilled worker. *Id.* The Commissioner also provided the following clarification:

A distinction can be made between a person whose skills and knowledge enable him or her to produce a product through physical or skilled labor and the person who is employed primarily for his ability to carry out a key process or function which is important or essential to the business' operation.

Id. at 53. In the present matter, the evidence of record demonstrates that the beneficiary is more akin to an employee whose skills and experience enable him to perform procurement duties, rather than an employee who has unusual duties, skills, or knowledge beyond that of a skilled worker.

It should be noted that the statutory definition of specialized knowledge requires the AAO to make comparisons in order to determine what constitutes specialized knowledge. The term "specialized knowledge" is not an absolute concept and cannot be clearly defined. As observed in *1756, Inc.*, "[s]imply put, specialized knowledge is a relative . . . idea which cannot have a plain meaning." 745 F. Supp. at 15. The Congressional record specifically states that the L-1 category was intended for "key personnel." *See generally*, H.R. REP. No. 91-851, 1970 U.S.C.C.A.N. 2750. The term "key personnel" denotes a position within the petitioning company that is "of crucial importance." *Webster's II New College Dictionary* 605 (Houghton Mifflin Co. 2001). In general, all employees can reasonably be considered "important" to a petitioner's enterprise. If an employee did not contribute to the overall economic success of an enterprise, there would be no rational economic reason to employ that person. An employee of "crucial importance" or "key personnel" must rise above the level of the petitioner's average employee. Accordingly, based on the definition of "specialized knowledge" and the congressional record related to that term, the AAO must make comparisons not only between the claimed specialized knowledge employee and the general labor market, but also between that employee and the remainder of the petitioner's workforce.

Here, the petitioner continually claims that the beneficiary is a key employee and is of crucial importance to the petitioner's industry. However, the petitioner has not provided any information pertaining to other gaucho chefs employed by the petitioner. Nor did the petitioner distinguish the beneficiary's knowledge, work experience, or training from the other employees. In fact, the record shows that the petitioner employs

¹ Although the cited precedents pre-date the current statutory definition of "specialized knowledge," the AAO finds them instructive. Other than deleting the former requirement that specialized knowledge had to be "proprietary," the 1990 Act did not significantly alter the definition of "specialized knowledge" from the prior INS interpretation of the term. The 1990 Committee Report does not reject, criticize, or even refer to any specific INS regulation or precedent decision interpreting the term. The Committee Report simply states that the Committee was recommending a statutory definition because of "[v]arying [*i.e.*, not specifically incorrect] interpretations by INS," H.R. Rep. No. 101-723(I), at 69, 1990 U.S.C.C.A.N. at 6749. Beyond that, the Committee Report simply restates the tautology that became section 214(c)(2)(B) of the Act. *Id.* The AAO concludes, therefore, the cited cases, as well as *Matter of Penner*, remain useful guidance concerning the intended scope of the "specialized knowledge" L-1B classification.

eighteen gaucho chefs in its multiple U.S. locations, all of whom work together as a team. Although the petitioner acknowledges that it does have competitors, it fails to reasonably distinguish the beneficiary from other "Americanized" gaucho chefs or steak house chefs working in the United States. The lack of evidence in the record makes it impossible to classify the beneficiary's knowledge of the petitioner's operation and cooking process as specialized, particularly since there are so many competitors in the industry serving churrasca. The AAO, therefore, is precluded from finding that the beneficiary's role is "of crucial importance" to the organization. Neither the petitioner nor counsel provided any documentation or discussion of an organizational structure and process unique only to the petitioner and of which the beneficiary possessed expertise. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). While it may be correct to say that the beneficiary is a highly skilled and productive employee, this fact alone is not enough to bring the beneficiary to the level of "key personnel."

It appears that the petitioner's business thrives on providing a feeling of authenticity to its customers. The AAO cannot ignore the fact that native Portuguese gauchos from Southern Brazil undoubtedly contribute to this authenticity. However, without clearly showing that the actual job of a gaucho chef could not be performed by a similarly qualified chef in the United States (for example, there are many Brazilian restaurants operating in the United States and therefore there are undoubtedly similarly qualified chefs employed therein), the fact that the petitioner desires to employ native "gauchos" from Southern Brazil is insufficient to qualify the beneficiary for an L-1B visa. While the beneficiary's ethnic background, skills and knowledge may contribute to the successfulness of the petitioning organization, this factor, by itself, does not constitute the possession of specialized knowledge.

The AAO notes that, with regard to counsel's reliance on the 1994 Associate Commissioner's memorandum, the memorandum was intended solely as a guide for employees and will not supersede the plain language of the statute or regulations. Although the memorandum may be useful as a statement of policy and as an aid in interpreting the law, it was intended to serve as guidance and merely reflects the writer's analysis of the issue. Therefore, while the beneficiary's contribution to the economic success of the corporation may be considered, the regulations specifically require that the beneficiary possess an "advanced level of knowledge" of the organization's process and procedures, or a "special knowledge" of the petitioner's product, service, research, equipment, techniques, or management. 8 C.F.R. § 214.2(l)(1)(ii)(D). As determined above, the beneficiary does not satisfy the requirements for possessing specialized knowledge.

In the present matter, the petitioner has failed to demonstrate that the beneficiary's training, work experience, or knowledge in the churrasca cooking style is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry. It is clear that the petitioner considers the beneficiary to be an important employee of the organization. The AAO, likewise, does not dispute the fact that the beneficiary's knowledge has allowed him to competently perform his job in the foreign entity. However, the successful completion of one's job duties does not distinguish the beneficiary as "key personnel;" nor does it establish employment in a specialized knowledge capacity.

Nor does the record establish that the proposed U.S. position requires specialized knowledge. While the position of gaucho chef may require a comprehensive knowledge of the manner in which to prepare and cook meats in the traditional barbeque style native to Southern Brazil, there is no documentation, other than counsel's assertions, that a gaucho chef must possess advanced, "specialized knowledge" as defined in the regulations and the Act. As previously stated, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel

do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The legislative history for the term “specialized knowledge” provides ample support for a restrictive interpretation of the term. In the present matter, the petitioner has not demonstrated that the beneficiary should be considered a member of the “narrowly drawn” class of individuals possessing specialized knowledge. *See 1756, Inc. v. Attorney General, supra* at 16. Based on the evidence presented, it is concluded that the beneficiary does not possess specialized knowledge, nor would the beneficiary be employed in a capacity requiring specialized knowledge. For this reason, the appeal will be dismissed.

Beyond the decision of the director, the record contains insufficient evidence to establish that the overseas company employed the beneficiary in a specialized knowledge capacity. *See* 8 C.F.R. § 214.2(l)(3)(iv). For the reasons discussed above, the petitioner failed to demonstrate that the beneficiary’s training, work experience, or knowledge in the field of churrasca is more advanced than the knowledge possessed by others employed by the petitioner, or in the industry itself in Brazil. While the position of gaucho chef may require a comprehensive knowledge of the manner in which to prepare and cook meats in the traditional barbeque style native to Southern Brazil, there is no documentation, other than counsel’s assertions, that a gaucho chef must possess advanced, “specialized knowledge” as defined in the regulations and the Act. For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO’s enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff’d*, 345 F.3d 683.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.